IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

:: J U D G M E N T ::

1. D.B.CRIMINAL APPEAL NO.448/1982
(Bheeka & Anr. Vs. State of Rajasthan)

2. D.B. CRIMINAL APPEAL NO.157/1983
(State of Rajasthan Vs. Bheeka & Ors.)

D.B. CRIMINAL APPEALS AGAINST THE JUDGMENT DATED 11.11.82 PASSED BY THE SESSIONS JUDGE, PALI IN SESSIONS CASE NO.19/80

DATE OF JUDGMENT : 25th OCTOBER, 2007

P R E S E N T

HON'BLE MR. JUSTICE BHAGWATI PRASAD
HON'BLE MR. JUSTICE DEO NARAYAN THANVI

Mr. J.R.Choudhary for the accused appellants.
Mr. J.P.S. Choudhary, Public Prosecutor for the State.

BY THE COURT : (PER MR. THANVI,J.)

1. Since, both these two criminal appeals arise out of the same judgment and similar facts, therefore, they are being disposed of by this common judgment. The learned Sessions Judge, Pali by his judgment dated 11.11.82 acquitted accused Bheeka for offence under Sections 302 & 307 IPC and convicted

him for offence under Section 324 IPC. The learned Sessions Judge acquitted accused Chatariya for offence under Sections 302, 307 read with Section 34 and Section 379 IPC and also acquitted accused Amra for offence under Sections 302, 307 IPC but convicted accused Amra for offence under Section 323 IPC. Accused Bheeka was sentenced to one and half years' rigorous imprisonment for offence under Section 324 IPC and accused Amra was sentenced for nine months' rigorous imprisonment for offence under Section 323 IPC. The State has filed the appeal against the judgment of acquittal and accused appellants Bheeka and Amra have filed the appeal against the order of conviction.

2. According to the prosecution story, accused Bheeka mortgaged his well to Prempuri, where water pump engine was installed. On 13.1.80, accused Bheeka and Prempuri had an hot exchange of words on account of wastage of water. On the next day i.e. 14.1.80, at about 9.30 am, PW-2 Budh Singh, the engine mechanic went to the water pump to start the engine and asked accused Amra to put water into the pipe of the pump to which accused Amra refused. Prempuri was told by engine mechanic PW-2 Budh Singh not to visit the well but Prempuri went there, where, Bhanwarpuri and Ladhu Ram were also present along with accused Amra and Chatariya. Later on, accused Bheeka came from his house upon a call of Prempuri,

armed with farsi and inflicted blow on the left ear of Prempuri. Bhanwarpuri shouted for rescue but Amra took a lathi and inflicted injuries to Prempuri. Chatariya also inflicted injuries by stone to Prempuri. Due to the skull injuries, Prempuri died. A FIR was lodged by Chailpuri immediately after the occurrence. The police registered the case and after investigation, challan was filed against accused Bheeka, Chatariya and Amra for offence under Sections 302, 302 read with Section 34 and 379 IPC. Charges were framed against the accused persons, who pleaded not guilty. The prosecution examined 13 witnesses. The statements of accused under Section 313 Cr.P.C. were recorded. They produced three witnesses in defence. After hearing the arguments, the learned Sessions Judge pronounced the judgment of conviction and acquittal as indicated above.

3. We have heard learned learned Public Prosecutor and learned counsel for the appellants in both the appeals and re-appreciated the evidence produced during trial. It is contended by the learned Public Prosecutor that the order of acquittal passed by the learned trial judge is based on wrong appreciation of evidence despite there being reliable eye witnesses and recovery of different weapons with whose help the accused committed the heinous crime of murder. According to the learned Public Prosecutor, the act of the three accused in killing

Prempuri was motivated on account of dispute about well, which accused Bheeka mortgaged with Prempuri. The injuries were inflicted with the help of lathi, farsi and stone only with the intention to kill Prempuri and there was a hot exchange of words prior to the incident, therefore, accused should be convicted and appropriate sentence be passed. Whereas, learned counsel for the accused appellants has submitted that the order of acquittal is perfectly based on the evidence on record but the conviction of accused Bheeka under Section 324 IPC and accused Amra under Section 323 IPC is contrary to law as the case of these two accused is not distinguishable from the case of accused Chatariya who has been acquitted by the learned Sessions Judge.

4. So far as the offence under Section 379 IPC is concerned, for which, the charges have been framed against accused Chatariya and Amra, we do agree with the finding of the learned trial judge that after the incident accused ran away from the spot and the recovered articles were found from the body of Prempuri vis-a-vis there is no link of these ornaments with the recovery which said to have been made in pursuance to Section 27 of the Evidence Act.

5. Coming to the offence of murder, learned Sessions Judge

has observed that deceased Prempuri died on account of head injury which could have been caused either by stone or lathi. PW-1 Dr. Kanaram Chouhan prepared the Post Mortem Report Ex.P-2. According to him, these injuries could have been caused by dharia, stone and lathi, which are articles Ex.1 to 3. During examination in chief, he has opined that death was caused due to skull injury, which has been shown at Serial No.8 of the Post Mortem Report Ex.P-2 as follows:

> Lacerated wound 1" x ¾" x ½" with open fracture of Lt. Occipital bone & crossed by injury No.6 & 7 (piece of same bone is available at the Lt. side of dead body & Blood clot was there.

6. In the cross examination, it has been stated that this injury can be caused by the corner of the stone like article 2. The stone is said to have been thrown by accused Chatariya who has been acquitted by the learned trial court. Eye witnesses Budh Singh PW-2 and Bhanwarpuri PW-4 have stated that accused Chatariya threw the stone. Budh Singh PW-2 has stated in his examination-in-chief that accused Chatariya used stone for inflicting injuries to Prempuri and in the cross examination, he has stated that he threw big stone on his head and used 4 to 5 small stones, whereas, Bhanwarpuri PW-4 has stated in his examination in chief that Chatariya inflicted stone blow on the

neck of Prempuri. Though, both these eye witnesses have stated about using of stone by Chatariya but the learned trial judge has disbelieved the story on account of being different versions about the use of stones by these eye witnesses and not stating the same in examination in chief. Though, we record our deep dissatisfaction with regard to the finding of the learned trial court with respect to accused Chatariya to be not named by these eye witnesses in examination-in-chief. Learned trial judge should not have misread the evidence while assigning the reasons of not guilty. He should have read the evidence as it exists and then concrete finding should be arrived at. It will be the travesty of justice, if we now reverse this finding especially when no blood was found on the recovered stone and its non-chemical examination. Yet from another angle also, we would not like to disturb the finding of acquittal of accused Chatariya because of the statement of the Doctor who has stated in his cross examination that injury No.8 cannot be caused with the scalping of stone and also if it is thrown from the back side. Eye witness Bhanwarpuri PW-4 has stated that this stone was thrown on the neck of deceased Prempuri. That apart there is no direct motive of accused Chatariya in causing death of deceased Prempuri. The dispute of Prempuri was with accused Bheeka who has mortgaged the field and well with him.

7. As regards, accused Bheeka and Amra, learned trial judge has rightly held that they inflicted only farsi and lathi blows and they have been convicted under Sections 324 and 323 IPC respectively. Upon appreciation of evidence of both these eye witnesses i.e. Budh Singh PW-2 and Bhanwarpuri PW-4, injuries which are said to have been caused by accused Bheeka and Amra were not so grave in nature by which death could have been caused and the learned trial judge has rightly held that the offence under Section 307 IPC is also not made out. Looking to the nature of the injuries inflicted by accused Bheeka and Amra, their conviction for offence under Sections 324 and 323 IPC respectively has been rightly recorded and they have been sentenced sufficiently for these offences. Consequently, we find no merit in both these criminal appeals so as to warrant interference in the finding arrived at by the learned Sessions Judge.

8. As a result both the appeals are dismissed and the judgment dated 11.11.82 passed by the learned Sessions Judge, Pali is confirmed.

(DEO NARAYAN THANVI),J. **(BHAGWATI PRASAD),J.**

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